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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHARLES E. FRIERSON, JR.,)	Case No. CV 11-02735-DOC (SP)
Petitioner,)	
v.)	ORDER DENYING A CERTIFICATE
)	OF APPEALABILITY
G.D. LEWIS, Warden,)	
Respondent.)	

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts reads as follows:

(a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

1 (b) **Time to Appeal.** Federal Rule of Appellate Procedure
 2 4(a) governs the time to appeal an order entered under these rules. A
 3 timely notice of appeal must be filed even if the district court issues a
 4 certificate of appealability. These rules do not extend the time to
 5 appeal the original judgment of conviction.

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 7 Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue
 8 “only if the applicant has made a substantial showing of the denial of a
 9 constitutional right.” The Supreme Court has held that this standard means a
 10 showing that “reasonable jurists could debate whether (or, for that matter, agree
 11 that) the petition should have been resolved in a different manner or that the issues
 12 presented were adequate to deserve encouragement to proceed further.” *Slack v.*
 13 *McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)
 14 (internal quotation marks omitted, citation omitted).

15 Two showings are required “[w]hen the district court denies a habeas
 16 petition on procedural grounds without reaching the prisoner’s underlying
 17 constitutional claim.” *Slack*, 529 U.S. at 484. In addition to showing that “jurists
 18 of reason would find it debatable whether the petition states a valid claim of the
 19 denial of a constitutional right,” the petitioner must also make a showing that
 20 “jurists of reason would find it debatable whether the district court was correct in
 21 its procedural ruling.” *Id.* As the Supreme Court further explained:

22 Section 2253 mandates that both showings be made before the court
 23 of appeals may entertain the appeal. Each component of the
 24 § 2253(c) showing is part of a threshold inquiry, and a court may find
 25 that it can dispose of the application in a fair and prompt manner if it
 26 proceeds first to resolve the issue whose answer is more apparent
 27 from the record and arguments.

28 *Id.* at 485.

1 Here, the Court has denied the Petition as being barred by the one-year
2 statute of limitations set forth in the Antiterrorism and Effective Death Penalty
3 Act, 28 U.S.C. § 2244(d)(1). Petitioner has failed to make the requisite showing,
4 or any showing, that “jurists of reason would find it debatable whether the district
5 court was correct in its procedural ruling” with respect to the timeliness of his
6 Petition.

7 Accordingly, a Certificate of Appealability is denied in this case.
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9 Dated: October 14, 2011

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12 HONORABLE DAVID O. CARTER
13 UNITED STATES DISTRICT JUDGE

14 Presented by:

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17 Sheri Pym
18 United States Magistrate Judge
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